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Articles in the field of agricultural economics, suitable for publication in the journal, will be welcomed.

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LAND TENURE SYSTEMS IN WHITE SOUTH AFRICAN AGRICULTURE

V : INTERNATIONAL COMPARISON AND POLICY IMPLICATIONS*

by

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INTRODUCTION

In a previous article¹ we pointed out that in South Africa there is no specific legislation to provide guidance on the content of leases. The Formalities in respect of Leases of Land Act, Act 18 of 1969, establishes the circumstances under which a lessee has a real right in land. In addition, there are in the general legislation a number of Acts which deal in general with the leasing of *res*, which include agricultural land. The obligations of lessors and lessees are included in that legislation, as well as aspects such as subletting, the termination of leases and the effect of the Roman-Dutch principle of "huur gaat voor koop"². There are a few matters about which complete certainty has not been established and in which the judiciaries of different provinces evidently attach differing interpretations to certain points of law³.

In order to try to obtain guidance as to what South Africa can do about legislation on the leasing of agricultural land it may be useful to look briefly at the legislation in certain other countries.

THE POSITION IN CERTAIN OVERSEAS COUNTRIES

In certain countries forms of land tenure differ considerably from those found in South Africa and in many countries there is specific legislation aimed at regulating relationships between lessors and lessees of agricultural land. A few countries will be discussed here so as to show how the approaches vary.

Countries where leasing plays no part or where there is no specific legislation in this connection have

been left out of account, as have countries that cannot be compared with South Africa because of their ideological systems.

1. Belgium

Land prices in Belgium are the highest in Europe⁴. They are on average twice as high as in the Netherlands and five times as high as in France.

In both 1950 and 1959 68 per cent of the area of agricultural land in Belgium was occupied by lessees.

In regions with high land prices greater percentages of the land are leased.

For 1950 there was a correlation coefficient of $r = 0,74$ between the percentage of the total area leased and land prices, and for 1959 a coefficient of $r = 0,6^5$.

According to the 1959 census data, 20 per cent of the farmers lease the whole of their farms, 53 per cent own a portion of the land they farm and only 27 per cent are full owners. The importance of leasing is further demonstrated by the fact that the last-mentioned group occupy only 7 per cent of the total area of agricultural land⁶.

The importance of leasing is further emphasised by extensive legislation in this connection. In 1952 the maximum rental for land was established at twice the real or normal rate of 1939. (Real if it was in fact leased in 1939; normal if not leased). Where there are also buildings, the rental was established at 2,5 times the rental in 1939.

The lessee also has the right to request a revision of his rental, both for the previous and/or the coming

* Based on an M.Sc.(Agric.) thesis by J. Joubert, University of Pretoria.

1. Joubert, J. and Groenewald, J.A. (1974). Land tenure systems in white South African agriculture IV: Legal aspects of leases. *Agrekon*, Vol. 13, No. 3.

2. *Ibid.*

3. *Ibid.*

4. Anon. (1970). Capital and finance in agriculture. Volume II, Country Studies, O.E.C.D. Report, Paris, p. 16

5. *Ibid.*, p.18.

6. *Ibid.*, p. 18

five years. Compensation can be claimed up to a year after the lease is terminated.

In practice this legislation has not been very successful and actual rentals are sometimes up to 50 per cent above the theoretical level. The fact remains, however, that lessees benefit considerably because rentals amount to only 1 to 2 per cent of the value of land⁷.

More recent legislation makes provision for the determination of rentals on the basis of property rates. A coefficient (which does not exceed 2,25 for land and 1,33 for buildings) is determined for each region, by which the above-mentioned rates are multiplied.

On the lessor's side provision is also made for concessions, particularly as regards taxation. The maximum tax that can be levied on rent is 30 per cent of the net rent in 1955. By comparison, taxation from other sources can be as much as 50 per cent.

Leases are entered into for a term of nine years. The lessor cannot cancel the contract during the first two nine-year terms. If he wishes to terminate the lease at the end of such a term, he must give the lessee notice two years in advance. Under specific circumstances he can also only refuse to renew a lease, for example, if he wants to cultivate the land himself. In such a case the owner must then cultivate the land personally for the next nine years.

The lessee, on the other hand, has the right to terminate the lease at any time, provided that he gives one year's notice. Where the lessee has made improvements and his lease lapses, he is compensated (subject to prior approval by the lessor or a special court). This compensation amounts to at least the original cost, depreciated at 4 per cent per annum.

To try to overcome the difficulties that often arise on the death of an owner, legislation was proposed in 1968 for the establishment of a corporation whose chief functions would be to buy land in such circumstances, to lease it with an option to buy and, if the option is not taken up, to sell it by public auction after 20 years.

2. Denmark

After 1960, when there were 10 000 fully leased farms, there was a decrease to 4 100 in 1966. This trend continued until 1968, when there were only 3 200 leased farms, or, in other words, only 3 per cent of the total agricultural production area was fully leased. The number of farm units of which a part is leased, however, increased from 14 500 in 1966 to 16 700 in 1968

and the total area leased rose during the same period from 7 per cent to 7,5 per cent.

Where the whole farm is leased, a written agreement must be drawn up. Portions of farms may be leased only with the approval of the minister of agriculture. No restriction is placed on rentals. There is, in fact, very little legislation on leasing, and evidently it is not felt that such legislation is needed⁸.

3. France

If 1963 half, or 50,1 per cent, of the agricultural land was cultivated by owner-occupiers, 1,4 per cent was cultivated by hired managers, 44,7 per cent of the land was leased and 3,8 per cent was cultivated under a share-cropping system. From 1955 there was a decrease in farming on shares from 6,4 per cent to the previously mentioned 3,8 per cent in 1963. Leasing, however, showed an increase in the corresponding period. There is a downward trend in the leasing of whole farms and owner cultivation, with a corresponding rise in mixed systems.

Rentals increased much more slowly than land prices and are subject to a certain maximum fixed by district or regional legislation (prefectorial decrease). Rentals are fixed in terms of certain quantities of farm produce. The rent paid is consequently directly dependent on the prices of agricultural products, provided that the quantities of basic produce according to which rentals are determined may not be more than the quantities which were regarded as normal rent for the region in 1939. Nevertheless, rentals are increasing gradually. From 1950 to 1960 the average rent increased from 2 — 2,5 to 2,5 — 3 quintals of grain per hectare⁹.

The minimum period for a lease is nine years. Renewal of the agreement is automatic except in cases where the lessor himself or one of his heirs wants to farm or where the lessee has not complied with all the conditions. If the lessor himself wants to farm, he must do so for at least nine years and take an active part in the farming himself.

On the death of a lessee the agreement may be continued by the widow or heirs, provided they have taken part in the farming activities for at least the previous five years. The renewal of an agreement may be refused if the lessee is older than 65 years. In addition, the lessee has first option to buy and he must be compensated for improvements made with the approval of the owner when the agreement expires. For essential improvements to the land, such as drainage, provision is made in regional legislation and prior approval need not be obtained.

7. *Ibid.*, p. 41.

8. *Ibid.*

9. *Ibid.*

Recently efforts have been made to popularise longterm leases with a minimum term of 18 years. Certain fiscal concessions are made during the first transfer and the rent is fixed between a minimum and maximum limit. The authorities tried to establish a number of big companies through which the public's savings could be channelled to the farmers. The purpose of these companies was to buy up agricultural land and then lease it to tenants at a reasonable rent for a long period. These attempts came to nothing, however, because a rental that would be reasonable to a lessee would not ensure adequate interest on capital.

A similar scheme, started on private initiative, has evidently been more successful. In this case the farmer "mobilises" part of his fixed property by ceding it to money-lenders outside agriculture. Organisations outside agriculture cannot, however, finance more than 30 per cent of the farmer's capital and the farmer can also buy back part or all of his ceded shares at any time. It still remains a problem to attract enough non-agricultural capital to these schemes¹⁰.

4. Italy

Land prices in Italy vary tremendously between regions and types of farm enterprise. Leasing plays a very small part. There has been a definite drop in the amount of land leased since 1961.

The unimportance of leasing is partly ascribed to the fact that rentals are fixed by the authorities. These fixed rentals are at present so low that few owners are interested in letting their land.

Until 1966 there was no legislation to determine the minimum term of a lease at anything other than the time the lessee needed to harvest his crop. In 1966, however, it was laid down that in cases where the lessor is not an active farmer the minimum term would be six years and the lease would be automatically renewed unless both parties wanted to terminate it.

Since 1957 equitable rents have been laid down annually by regional commissions on the basis of an objective assessment of production conditions. Where one of the parties to a lease feels that the agreed rent does not match the equitable rent, he can apply to the court for it to be reviewed. The judge is not, however, bound by these equitable rents and can act in his own discretion.

A share farmer is protected by the law and is entitled to 58 per cent of the produce or profit, but can only be held responsible for 50 per cent of the production costs. In addition, he must take part in the manage-

ment of the units. Changes in the production process can even be introduced against the owner's wishes, provided they are approved by the administrative authority¹¹.

5. The Netherlands

From 1955/56 to 1960/61 land prices were allowed to rise only gradually at about 4 per cent per year. After the lifting of control, however, land prices began to rise considerably faster (at a rate of about 15 per cent a year between 1960/61 and 1964/65). Control over rentals has been retained, although the standards used are reviewed regularly. The result is that at present there is no connection between rentals and land prices. This means that lessees benefit compared with owners¹².

There has been a drop in the total area wholly leased — from 33,7 per cent in 1959 to 29,3 per cent in 1966. The trend in the Netherlands, as in many other countries, is towards an increase in the area and number of farm units where the entrepreneur leases land in addition to what he owns. During the period 1956 to 1966 the increase in the latter case was from 39 per cent to 42,3 per cent. Considering that the area occupied by owners only was a mere 28,5 per cent of the total agricultural land in 1966¹³, the importance of leasing becomes clear.

As has already been mentioned, control is exercised over rentals. Standard rents are determined according to land use and type. The minimum term of lease for a whole farm is set at 12 years, and for separate plots six years. All leases must be approved by the "Grondkamer" before they become effective.

The lease can be terminated if the lessee does not fulfil his obligations or sublets the land without the lessor's consent, or if the land is required for non-agricultural purposes. This is also the case if the owner, or one of his heirs, wants to farm himself. The lessee has the first option to buy when a farm is sold and, if he does not buy, he has the right to lease the farm for the next six years.

Provision is made for the lessee to be compensated for improvements made, provided the approval of either the lessor or the "Grondkamer" has been obtained.

What usually happens in practice is that the new lessee compensates the outgoing lessee.

The fact that leasing is controlled has in many cases meant that the prospective lessee has to pay a

10. *Ibid.*

11. *Ibid.*

12. *Ibid.*

13. *Ibid.*

sum of money for the privilege of leasing. This sum is often as high as 10 to 20 per cent of the value of the leased fixed improvements¹⁴.

It is clear from this that there is extensive legislation in connection with leasing. Nevertheless, it is felt that the present legislation does not satisfy all the requirements. Lessors receive a relatively low rent, have little authority regarding their land and are not interested in making large capital investment in their land. Because of the low rentals there is also no incentive for investors outside agriculture to invest money in agricultural land. On the other hand, the lessee does not have enough security to tackle long-term projects.

6. Portugal

The average value of agricultural land is about 16 000 escudos (\pm R397) per hectare. This is low in comparison with other European countries.

Leasing of agricultural land plays no notable part in Portugal. According to information dating from 1952–1954, just over one-third of all the units are farmed by persons other than the owners¹⁵.

The minimum currency of a lease is set by the Civil Code (1967) at six years, even in cases where the agreement is entered into for a shorter term.

The lessee is at liberty to make any improvements he considers necessary, with or without the consent of the owner. If approval is obtained in advance, the lessee can claim compensation. If the owner does not want to give his consent, the lessee may apply for a court order approving these plans. A court order is, however, granted only if the planned improvements offer definite advantages to farming in general. An example of such an advantage is the draining of areas that are too wet.

The two aspects mentioned above have encouraged lessees to incur short-term and medium-term expenses of a fairly fixed nature. The present legislation is, however, insufficient to make longer-term investments acceptable¹⁶.

7. Sweden

Leased land increased from 27 per cent in 1956 to 31 per cent in 1966. Sweden follows the same pattern as most of the other countries already discussed¹⁷.

The drop in the number of farms wholly leased is ascribed to legislation in connection with the maintenance

of improvements, which makes letting unattractive to owners. The increase in partly leased farms is evidently due to a number of factors. Many farmers prefer to let part of their farms, because they regard property as an insurance against inflation. It is also advantageous to lease only a portion, so that the owner can retain the use of his house, because housing is evidently a problem. The high price of land possibly also makes it more attractive to hire additional land rather than buy it.

In 1968 legislation was proposed to do away with the earlier distinction between "general", "social" and "official" leasing. A distinction should only be made between "whole farm tenancy" and other types. In the first case the minimum term of the lease is five years and the lessee is given preference for the ensuring term. For other leasing the length of the term is determined only by negotiation, provided that the lessee is given preference on renewal if the term exceeds one year.

The aim of this new legislation is to make leasing more efficient by eliminating complicated legislation in this connection.

8. United Kingdom

Unlike the case in most other countries, there has been a drop in the total amount of agricultural land leased in England and Wales. As farm sizes increase, so the importance of leasing increases too.

The increase in farms occupied by owners is ascribed to the fact that owning land gives the farmers greater security, more social status and greater economic freedom. In addition, many people who have inherited large estates are obliged to sell off portions because of high estate duties. In many cases these portions are bought by the people who were leasing them at the time.

Leasing is, however, still an important form of land tenure. In 1969 more than 50 per cent of all the farms in England and Wales were still partly or fully leased¹⁸.

Legislation concerning leasing in Great Britain is mainly aimed at protecting the lessee against arbitrary termination of his lease by the lessor, protecting the lessor against misuse by the lessee and regulating the basis on which leasing and compensation are calculated.

In England and Wales farms are usually leased on a year-to-year basis, but in Northern Ireland, where

14. *Ibid.*

15. *Ibid.*

16. *Ibid.*

17. *Ibid.*, p. 53.

18. *Ibid.*

most land is held by owners, leasing is mainly on a seasonal basis. However, where farms are leased for a specified period, the lessee automatically continues his lease on a year-to-year basis on the expiry of the original period.

A lease may be terminated by the lessor only under the following circumstances:

- (a) If the land is required for non-agricultural development which has the approval of the planning authorities;
- (b) if the lessee is guilty of "bad husbandry";
- (c) if the lessee fails to pay his rent;
- (d) if the lessee breaks the agreement; or
- (e) if the lessee becomes insolvent.

If the lease is terminated for any reason other than those mentioned above, the lessee has the right to appeal to an agricultural land court.

The death of the lessor, or sale of the leased farm, does not in any way influence the duration of the lease. In Scotland it is possible for the heirs of a lessee to continue the lease after his death under certain circumstances. This does not, however, apply in England and Wales.

If the lease is terminated for any reason other than those stated, the lessee may claim an amount equal to one or two years' rent or, under point (a) four years' rent.

In addition, the lessee may also claim for improvements made with the owner's consent. For improvements of a less permanent nature, such as the improvement of soil structure, no prior consent is needed. Similarly, the lessor may claim for deterioration or neglect. What usually happens in practice is that the new lessee compensates the outgoing lessee for the improvements, particularly in the case of short-term improvements.

Both parties to a lease are further protected by standard lease agreements laid down by statute. If a contract does not cover a specific provision, the standard provisions are regarded as binding.

This extensive legislation affords the lessee considerably security. "A competent tenant farmer, therefore, has for his own lifetime something approaching the security of an owner occupier"¹⁹. An interesting de-

velopment in recent times is that the lessor calls for tenders. Often a proposed budget is required to be submitted with the tender to enable the lessor to judge whether the lessee will be in a position to pay the rent without exhausting the land. Before an agreement is entered into, a thorough investigation is made into the lessee's background, experience, training, general aptitude, etc. It appears that rentals that are set on such a basis are higher than those determined by the traditional personal negotiation.

9. Countries where leasing plays an important part, but where little or no specific legislation exists

The United States of America and Canada are among these countries. In 1964 the areas of agricultural land under different forms of tenure in the U.S.A. expressed as percentages, were as follows: Full owners, 26 per cent; managers, 7 per cent; part-owners, 53 per cent; lessees, 14 cent²⁰.

In Canada 23 per cent of the farmers in 1966 were part-owners and they occupied 44 per cent of the land. Those who only leased land made up 5 per cent of the total (4 per cent of the land) and full owners and managers together accounted for the rest²¹. In both countries part-owners are increasing in importance.

Apart from certain general legal principles regarding the concluding of leases, there is no specific legislation in these countries on the leasing of agricultural land. A good deal of extension is, however, devoted to this in the U.S.A. In various bulletins published by the department of agriculture examples of standard leases are given. In these departmental publications farmers are told in detail about the various aspects that should be covered by such an agreement.

10. General

It is interesting to note that legislation on leasing is very comprehensive in certain countries where leasing is very important, for example, in Belgium, the United Kingdom and the Netherlands. There legislation is aimed mainly at giving the lessee greater security. In certain other countries where leasing is important, such as the U.S.A. and Canada, there is a situation similar to that in South Africa, namely, a lack of specific legislation regarding the leasing of agricultural land.

The problem, however, is that concluding a lease does not involve the interests of one party only, but the interests of two parties. Therefore, if the lessee benefits by legislation to such an extent that it becomes uneconomic for the lessor to lease, land to be leased

19. *Ibid.*, p. 48.

20. *Ibid.*, p. 20.

21. *Ibid.*, p. 18.

will simply cease to be available. It seems that any drastic interference that seriously disrupts the operation of the laws of supply and demand may in this case also give rise to serious maladjustment. Instead of security, some degree of uncertainty then results.

In some of the countries attempts are being made to put new systems of land tenure into operation. The most important of these is undoubtedly the so-called "lease back" system under which the farmer gets his fixed capital in liquid form. A serious drawback of this system is, however, the enormous amounts of capital needed to launch it.

POLICY IMPLICATIONS FOR SOUTH AFRICA

In South Africa owner-occupancy is by far the most important form of land tenure, but there is an increasing tendency for owner-occupiers to lease additional land²². There are therefore signs of a gradual change in land tenure patterns. The question that arises now is whether, in its policy, the Government should try to promote any specific form of land tenure and, if so, whether legislation should be passed for this purpose.

The first question that arises is as to what should determine how the desirability of different systems can be weighed against each other. A great many factors merit consideration here.

As Sir Thomas Whittaker²³ puts it: "I would suggest that the question is not necessarily which method of the tenure and ownership of land will yield the largest amount of produce or income. The comfort and welfare of the community as a whole should be the first consideration. That system of ownership and occupation which will enable the largest number of persons to live in reasonable comfort in the country as a whole is the one which legislation and public opinion should promote."

Agricultural policy is not based entirely on economic considerations. In some cases purely political and social considerations obviously play a more important part than economic considerations. "The truth is that where economic and social objectives conflict, most of the affluent societies, no matter where located, tend to give preference to social considerations in forming the value judgements that basically determine their policies"²⁴. Until now, however, there has been complete freedom of choice in South Africa where the system of land tenure is concerned. Doing away with such free-

dom of choice would not be consonant with the democratic principle generally preferred in South Africa.

Nevertheless, if it is considered desirable, certain other forms of land tenure can be promoted in South Africa within the framework of freedom of choice. Research into the desirability of alternative land tenure systems must take place within such a framework.

Should it be established beyond any reasonable doubt that other land tenure systems are desired, another field of research would automatically open up, namely, the optimum combination of land tenure systems for the country as a whole. "The problem of formulating a policy, therefore, is not one simply of arranging a set of objectives in order, but of deciding how far to push each objective. In other words, the problem is to decide how much of desired achievements under objectives a, b, c, etc., will constitute an optimum combination"²⁵.

A prerequisite for such a study is, however, knowledge of the advantages and disadvantages of each land tenure system. Comparative studies of the different systems under South African conditions would therefore first have to be finalised. Because there are evidently considerable differences at the regional level, it would be desirable to undertake such studies on a regional basis. In some areas it would even be preferable to undertake them on a farm enterprise type basis, particularly in heterogeneous production areas. In such an investigation it would also be essential to investigate the influence of land prices and the availability of fixed and working capital on the system of land tenure. In this case in particular it would be beneficial to study to what degree some overseas countries, such as France, have succeeded in establishing alternative methods of financing in agriculture. Hand in hand with this goes the creditworthiness of entrepreneurs under each system and the availability of credit under each system.

In analysing the economic advantages and disadvantages of each system, it would be necessary to use cost-benefit analyses because the non-economic variables will also have to be considered. This immediately focuses the spotlight on another field of research, namely, the influence of social aspects related to the different land tenure systems.

Although this last field probably falls more in the area of research of the rural sociologist, there are nevertheless a number of socio-economic aspects that are of cardinal importance to the agricultural economist.

22. Joubert, J. and Groenewald, J.A. (1974). Land tenure systems in White South Africa agriculture III: Regional analyses. *Agrekon*, Vol. 13, No. 2.

23. Whittaker, T.P. (1914). *The ownership, tenure and taxation of land*. MacMillan and Co., Ltd., London, p. 519.

24. Yates, P.L. (1966). *Need agriculture be disadvantaged in a growing world?* Oxford University Press, London, 1966, p. 72.

25. McEntire, D. and D. Agostine. *Toward modern land policies*, Tipografia Poligrafica Moderna, printed in Italy, pp. 472-273.

So far as it has been possible to ascertain, there is hardly any information available in this field, apart from casual reference in certain studies. A considerable amount of research has been done on certain such aspects overseas, but results differ widely and their relevance to South Africa is highly questionable.

To obtain reliable information on the influence of socio-economic factors on the different land tenure systems it would therefore be necessary to undertake specific studies.

When alternative land tenure systems are investigated, it is logical that leasing, and therefore also leases, will receive most attention, because after ownership that is the most important form of land tenure. The drawing up of model lease agreements which afford the lessee the highest degree of protection without being disadvantageous to the lessor and which also conform to general legal principles regarding leasing should receive the highest priority. It must, however, be emphasised that the function of such a model agreement should only be to serve as a guide for the parties drawing up a lease.

It follows that before such a model lease agreement can be drawn up there will have to be thorough research into the requirements of the various parties to such an agreement.

Drawing up such a lease also requires research into the role that legislation can play in this connection. Such research should be carried out in co-operation with lawyers so that a legally correct basis for future research can be created at the same time. On looking at the position in overseas countries where leasing plays an important part one finds that in certain countries such as Belgium, Britain and the Netherlands, there is comprehensive legislation in this connection but that such legislation is almost non-existent in the United States of America and Canada. This indicates that legislation is not a cause of leasing, but rather a result of it.

Full account must also be taken of the fact that legislation in each country is unique as a result of related factors which are distinctive in each country. Legislation therefore cannot just be taken from one country and directly applied to another country. Nevertheless, many important lessons can be learnt from the efforts of other countries to control and manipulate land tenure by legislation. An example is the failure of the French attempt to establish big land ownership through public companies. The application in South Africa of legislation tested and proposed in some overseas countries offers an interesting and challenging field of study for future researchers.

A last field of inquiry which is closely allied to the ones discussed above is the relationship between risk

and uncertainty on the one hand, and the system of land tenure on the other hand. The importance of this aspect is emphasised by Sir Thomas Whittaker as follows: "Security is essential if any business, and especially agriculture, is to be carried on under conditions conducive to enterprise, efficiency and success"²⁶. The possibility of a special agricultural court, similar to the "Grondkamer" in the Netherlands, possibly also merits further consideration. Such a court should offer the various parties concerned in leases the opportunity of clearing up differences without having to incur particularly high costs. Such a body can, for example, also serve to apply specific provisions which must hold in the drawing up of leases. In this way some of the uncertainty can be removed for the parties concerned. To quote from Whittaker once more: "It is difficult to see how security can be obtained unless there be some authority or tribunal to whom appeal can be made in case of failure of the parties to reach an agreement"²⁷.

The areas for further research and study can therefore be briefly summed up as follows:

- (1) A determination of the real need, if any, for alternative land tenure systems.
- (2) A cost-benefit analysis of the different land tenure systems.
- (3) The optimum combination of different systems on a regional basis.
- (4) The influence of land prices and the availability of capital on the choice between different systems.
- (5) The social aspects and the implications of different systems.
- (6) The requirements which a model agreement must meet.
- (7) The role of legislation and its influence on the different systems.
- (8) The effect of risk and uncertainty on the acceptability to the entrepreneur of the different systems.

POSSIBLE APPLICATION IN SOUTH AFRICA OF CERTAIN ASPECTS OF OVERSEAS AGRICULTURAL POLICY

The hypothesis may be put forward that, as the gap between the market value and the productive value of agricultural land widens, leasing will increase in importance as a method of obtaining the right of use of agricultural land²⁸.

26. Whittaker, T.P., *op. cit.*, p. 524

27. *Ibid.*, p. 521.

28. Hattingh, H.S., *op. cit.*, p. 9

With the rapid rise in land prices, partly as a result of using agricultural land as a form of investment, South Africa is fast approaching the stage where it will become virtually impossible for the prospective young farmer to go in for farming because of its tremendously high capital requirements. This situation was evidently already reached a number of years ago in certain overseas countries and legislation is aimed mainly at overcoming this problem.

In Germany, for example, an investigation was made to try to determine the future capital requirements in agriculture. The enormous amount of capital which it appeared would be needed brought the researchers to the conclusion that a more flexible system of land tenure would have to be found. "If the future system of land cultivation is to be the same as the present one, that is about 90% of land under owner-occupancy, then the funds required for the transfer of land will be enormous. It appears therefore that a more flexible system of land tenure should be found. One important possibility in this respect would be an expansion in tenancy arrangements. In order to achieve this, however, the renting of land would have to be lucrative for both sides, the owner as well as the tenant"²⁹.

The big difference between South Africa and many overseas countries, however, is that leasing was or is the traditional system of land tenure in many of these countries whereas owner-occupancy is the traditional land tenure system in South Africa, largely for historical and social reasons. Therefore, where legislation in Europe is aimed mainly at protecting the lessee's interests, if legislation appears to be desirable in South Africa, it will be necessary to aim at making such a system socially and economically more acceptable to all parties directly involved in it.

Any legislation that protects the lessee's interests more, and so offers him greater security, will most probably cause the demand for leased land to increase considerably. However, it is to be doubted whether the unimportance of leasing in South Africa can be ascribed to the lack of a demand for leased land. It may possibly be put down rather to inadequate supply — again an aspect that calls for research. If this is the case, policy and legislation in South Africa will have to be directed towards offering the lessor an incentive to lease his land; otherwise little success can be expected in the application of policy directions that have succeeded to some extent in other countries.

Such incentives could include tax rebates on rentals received, provided the period of the lease exceeds a

certain minimum period. In Germany, for example, the government pays a premium of 500 DM (about R2 000) per hectare, if land is leased at a reasonable price for a period longer than 12 years, subject to certain further conditions³⁰.

It still remains difficult, however, to see how leasing could become very popular as an alternative form of farm tenure in South Africa. Given the historical development of farm tenure and the fact that the interests of the lessee and the lessor often conflict, it may be assumed with reasonable certainty that owner-occupancy will remain the most popular form of farm tenure for a long time yet.

Consequently, it is useful also to consider new forms of farm tenure where there is a distinction between those who own the land and those who undertake the farming. These systems are the so-called lease-back systems. The farmer sells his land or just his cultivated lands, orchards or vineyards to a body, organisation or company and then leases the same land back over a very long period.

This system has already been tested in France³¹. Non-agricultural financing may not, however, provide more than 30 per cent of the total capital, so as to make sure that the farmer cannot lose his property.

A similar system is the one under which, for example, the farmer issues a number of shares to a body, organisation or company, but retains the controlling share. The farmer then has the opportunity to liquidate a large percentage of his fixed capital again without forfeiting ownership of his land. When circumstances justify this, the farmer can then buy back his shares.

A serious disadvantage of such systems is that huge amounts of capital would be needed to establish them. It can also be expected that participating farmers would have to submit audited financial statements annually. The latter point can be regarded rather as an advantage if the additional administrative work is left out of account.

Whatever the pros and cons of each system may be, it will pay South Africa to carry out research in good time into alternative farm tenure systems. If the country wants to continue to use its agricultural resources in the future to meet its domestic needs and also to earn foreign exchange, the financing of fixed capital assets, probably through alternative systems of farm tenure, will have to be given serious consideration.

29. Anon. (1970). Capital and finance in agriculture. Volume One, General Report. The Organisation for Economic Co-operation and Development, Paris, p. 46.

30. Anon. Capital and finance in agriculture. Volume Two, Country Studies, *op. cit.*, p. 16.

31. *Ibid.*, p. 51.

CONCLUSION

To sum up, it appears from this series of articles that historical events were responsible for the fact that a system of owner-occupancy is the dominant one in our agriculture. In South Africa there is little specific legislation to control the leasing of agricultural land, but these aspects are covered by the general legislation. There are a few aspects about which there is uncertainty, and, to ensure that things run smoothly, legislation should be passed to remove this uncertainty.

In certain overseas countries there is very specific legislation on the leasing of agricultural land. South Africa could possibly seriously consider passing cer-

tain specific legislation on aspects of the content of leases.

Rising capital requirements may result in forms of land tenure other than owner-occupancy playing a greater part in South Africa in the future. The desirability, nature and balance of different forms of tenure will have to be investigated in good time and also the methods, if it is considered desirable to encourage other forms of tenure. This, therefore, presents an extensive field of research about which very little has been done in South Africa.

Such research will have to be multi-disciplinary and inter-disciplinary. It seems that this research deserves high priority now.